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BURNS DOANE SWECKER & MATHIS L L P			REICHLE, KARIN M	
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3761

DATE MAILED: 08/25/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/009,601

Applicant(s)

PERSSON, CHARLOTTE

Examiner

Karin M. Reichle

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 March 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6 and 8-17 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-6 and 8-17 are is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☒ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 12/11/01, 3/6/02
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Oath/Declaration

1. The oath or declaration is defective. A new oath or declaration in compliance with 37 CFR 1.67(a) identifying this application by application number and filing date is required. See MPEP §§ 602.01 and 602.02.

The oath or declaration is defective because:

It does not identify the foreign application for patent or inventor's certificate on which priority is claimed pursuant to 37 CFR 1.55, and any foreign application having a filing date before that of the application on which priority is claimed, by specifying the application number, country, day, month and year of its filing.

The date of filing the '207 application is inaccurate.

Specification

Description

2. The abstract of the disclosure is objected to because the abstract is a copy of the PCT abstract. A clean copy of such abstract on a separate page must be submitted prior to issue. Also inferred terminology, i.e. "The present invention relates to", and legal terminology, i.e. "comprises" and "said", should be avoided. Correction is required. See MPEP § 608.01(b).

3. The disclosure is objected to because of the following informalities: The Summary of the Invention section, i.e. a description of the invention of the claims, and the claims should be commensurate, see MPEP 608.01(d) and 1302.

Appropriate correction is required.

4. On page 5, line 19, "0,01" would be in better form as --0.01--.

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Claim Language Interpretation

5. The terms "absorbent article", "active additive" and "visual indicator" are defined on pages 2-3 but it is noted that such are not limited to only the specific examples given unless so specifically claimed in the claims. The terminology "activity status of the active additive" is defined as set forth on page 3.

Claim Objections

6. Claims 2-6 and 8-15 are objected to because of the following informalities: in claims 2-6 and 8-15, line 1, "An" should be --The--. It is noted that claim 4, line 1, "an" should be --An-- to comply with 37 CFR 1.121. In claim 6, lines 2 and 3, --product-- should be --article--. Appropriate correction is required.

Claim Rejections - 35 USC § 112

7. Claim 6 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

A positive antecedent basis for "the uppermost layers of the absorbent product" should be set forth.

Claim Rejections - 35 USC § 102

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

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(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

9. Claims 1-2, 6, 8 and 16-17 are rejected under 35 U.S.C. 102(b) as being anticipated by Cercone '150.

See, e.g., Claim Language Interpretation section supra, col. 1, lines 8-11, and 21, col. 2, line 19-col. 3, line 8, col. 3, line 63-col. 4, line 19, col. 5, line 28-col. 6, line 3, i.e. the absorbent article is the sponge, the active additive is iodine, the visual indicator is the color change in response to the moisture content, i.e. the glycol, see, e.g., col. 5, lines 28-42, which is placed on the outermost surface of the sponge, i.e. an uppermost layer, and the sponge can be used as a tampon or panty liner. The method as set forth in claims 16-17 is performed by the Cercone device, see cited portions supra.

10. Claims 1-3, 5-6, 8, 14 and 16-17 are rejected under 35 U.S.C. 102(b) as being anticipated by Blank et al '023.

See, e.g., Claim Language Interpretation section supra, col. 1, lines 11-18, col. 4, line 16-col. 5, line 6, col. 7, lines 55-64, col. 12, line 65-col. 13, line 17, i.e. the article is a substrate, e.g., a diaper, sanitary napkin or tampon, the active additive is the acid superabsorbent polymer, the visual indicator is the color change in response to the acid content, i.e. the bromophenol blue, see, e.g., paragraph bridging cols. 4-5, which is placed on a visible surface of the substrate, i.e. an uppermost layer. The method as set forth in claims 16-17 is performed by the Blank et al device, see cited portions supra.

11. Claims 1-2, 5-6, 8, 12-14 and 16-17 are rejected under 35 U.S.C. 102(b) as being anticipated by Moench '94.

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See, e.g., Claim Language Interpretation section *supra*, abstract, Figures 1 and 3, col. 1, lines 58 et seq col. 2, lines 39-63, col. 5, line 52-col. 6, line 60, col. 7, lines 4-14, col. 9, line 34-col. 10, line 35, col. 10, line 65-col. 11, col. 15, lines 22-31 and claim 10, i.e. the article is 10, the active additive is an acid superabsorbent polymer, citric acid and/or lactic acid, the visual indicator is the color change in response to the acid content, i.e. the bromocresol, see paragraph bridging cols. 9-10, which is placed on a visible uppermost layer 60. Claim 8 recites functions, properties or capabilities of the claimed structure of the absorbent article. Moench teaches the device 10 may function as a catamenial device. Therefore it is the Examiner's first position that Moench expressly teaches the functions, properties and capabilities set forth in claim 8. In any case, Moench teaches all the claimed structure of the absorbent article. Therefore there is sufficient factual evidence to conclude that the functions, properties and capabilities of such claimed structure are also inherent in the same structure of Moench, see MPEP 2112.01. The method as set forth in claims 16-17 is performed by the Moench device, see cited portions *supra*, discussion of claim 8 as well as MPEP 2112.02.

12. Claims 1, 6, 8, 16 and 17 are rejected under 35 U.S.C. 102(b) as being anticipated by Fenn et al '479.

See, e.g., Claim Language Interpretation section, abstract, col. 1, lines 7-36, col. 1, line 60-col. 2, line 17, col. 3, lines 31-47, i.e. the absorbent article is the article comprising the hydrophilic cloth, the active additive is the antimicrobial compound, the visual indicator is the dye placed on a visible surface area of the article, i.e. one of the uppermost layers. Claim 8 recites functions, properties or capabilities of the claimed structure of the absorbent article. See col. 2, lines 6-10 of Fenn et al. Furthermore Fenn

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et al teach all the claimed structure of the absorbent article. Therefore there is sufficient factual evidence to conclude that the functions, properties and capabilities of such claimed structure are also inherent in the same structure of Fenn et al, see MPEP 2112.01. The method as set forth in claims 16-17 is performed by the Fenn et al device, see cited portions supra, discussion of claim 8 as well as MPEP 2112.02.

Claim Rejections - 35 USC § 103

13. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

14. Claims 3 and 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over Moench et al '949 in view of Schoenfeld '444.

Claim 15 requires the visual indicator be comprised of methly orange, methyl red or methyl violet whereas Moench teaches the use of bromocresol purple. The criticality of using these particular indicators versus other indicators such as bromocresol purple has not been disclosed. Bromocresol purple and methyl red discolor or indicate in the region of neutrality to weak acidity. Moench teaches using the indicator to indicate the pH of the article is within the range of 3 to 5. See Schoenfeld '444 at the pH indicator chart bridging cols. 2-3, i.e. methyl red also indicates or changes color between 3 and 5. Therefore to make the bromocresol purple of Moench methyl red instead would be obvious, see In re Siebentritt, 54 CCPA 1083 (two equivalents are interchangeable for their desired function, express suggestion of desirability of substitution not needed to

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render such substitution obvious). In so doing, the modified Moench device would also include the limitations of claim 3.

15. Claims 4 and 9-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Moench et al '949 in view of Applicant's admissions of the teachings of the prior art in the BACKGROUND ART section of the instant application and SCA '846.

Applicant claims the active additive is a microorganism, more specifically an acid producing microorganism, even more specifically lactobacillus, and most specifically a particular strain of lactobacillus whereas Moench, while teaching the desire for providing greater acidic buffer capacity, i.e. greater acidifying properties, does not specifically teach such an active additive. The criticality of using these particular active additives versus the other active additives such as lactic acid or citric acid or acid SAP as disclosed by Applicant is not disclosed in the instant application. Note again the portions of Moench cited as well as the teachings of the prior art as set forth by Applicant in the Background section of the instant application and SCA '846 at page 1, line 6-page 4, line 21 and page 4, line 31-page 7, line 14, i.e. acid active additives such as acid SAP, lactic acid and citric acid as claimed by Moench and acid producing microorganisms as claimed in claims 4, 9 and 10 all function to prevent malodors and inhibit growth of bacteria in catamenial devices. Therefore to make an active acid additive of Moench an acid producing microorganism instead as taught by SCA '846 would be obvious, see *In re Siebentritt*, 54 CCPA 1083 (two equivalents are interchangeable for their desired function, express suggestion of desirability of substitution not needed to render such substitution obvious). In so doing, the modified Moench device would also include the limitations of claims 4 and 9-10. Claim 11 requires the lactobacillus be of a particular

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strain. Note again the lack of disclosure of the criticality of such strain over other strains of lactobacillus. Also note the prior art combination teaches the general conditions of the claims, i.e. an absorbent article including a acid producing lactobacillus microorganism and a visual indicator, although it does not teach this use of the claimed strain. However, since the general conditions are disclosed, it would not be inventive to discover the optimum or workable strains of lactobacillus by routine experimentation, see *In re Allen et al*, 105 USPQ 233.

Conclusion

16. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The Murray reference also teaches a device with an active additive and inherently visually indicates exposure to moisture by expanding. The other references teach various active ingredients and/or indicators.

17. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Karin M. Reichle whose telephone number is (703) 308-2617. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Calvert can be reached on (703) 308-1025. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

K. M. Reichle
Karin M. Reichle
Primary Examiner
Art Unit 3761

KMR
August 18, 2004